

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Samuel Shorter, III,

Plaintiff,

vs.

Officer Mark Betcke, Warden Cecilia
Reynolds, Case Worker Rembert, and
Nurse Michele Ussery,

Defendants.

Civil Action No. 6:14-3329-TMC-KFM

REPORT OF MAGISTRATE JUDGE

The plaintiff, a state prisoner proceeding *pro se*, seeks relief pursuant to Title 42, United States Code, Section 1983. This matter is before the court on the plaintiff's motion to voluntarily dismiss his case (doc. 28).

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Civ. Rule 73.02(B)(2)(d) (D.S.C.), this magistrate judge is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983, and submit findings and recommendations to the district court.

On December 19, 2014, the defendants filed a motion for summary judgment (doc. 20). The undersigned on December 22, 2014, issued a *Roseboro* order to apprise the plaintiff of the dispositive motion procedure and the possible consequences if he failed to respond to the motion. *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975). On January 19, 2015, the defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 41(a)(1) or (2). Defense counsel stated that he had received a "Letter of Withdraw of Lawsuit," indicating the plaintiff wished to dismiss the instant action (doc. 24). The defendants stated they stipulated to dismissal pursuant to Rule 41(a)(1), or, in the alternative, they moved for an order from the court pursuant to Rule 41(a)(2). On January 20, 2015, the plaintiff filed the "Letter of Withdraw of Lawsuit," which states in pertinent part, "I'm gonna withdraw my lawsuit due to the fact of failing to exhaust my administrative

remedies” (doc. 28). The letter has been construed as a motion for voluntary dismissal. On January 26, 2015, the defendants again indicated their consent (doc. 29).

Wherefore, based upon the foregoing, it is recommended that the plaintiff’s motion for voluntary dismissal (doc. 28) and the defendants’ alternative motion to dismiss (doc. 24) be granted and this action be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). Should the district court accept this recommendation, the defendants’ motion for summary judgment (doc. 20) will be rendered moot.

IT IS SO RECOMMENDED.

s/ Kevin F. McDonald
United States Magistrate Judge

January 27, 2015
Greenville, South Carolina